

**INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE**

Insurance Producer Standards of Conduct

Proposed Readoptions with Amendments: N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D

Authorized By: Holly C. Bakke, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, and 17:22A-26 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-38

Submit comments by April 8, 2005 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D expire on June 28, 2005. As required by Executive Order No. 66 (1978), the Department of Banking and Insurance (Department) has reviewed these rules, and has determined that Chapters 17A, 17B, 17C and 17D are necessary, reasonable and proper for the purpose for which they were promulgated. These rules as adopted in December 1989, and amended thereafter, reflect the current standards and practices required by the Department.

These rules continue to provide insurance producers with a clear and easily-located compendium of performance guidelines with standards of conduct concerning their daily operations and their interaction with the Department and the public.

N.J.A.C. 11:17A defines activities for which one must be licensed as an insurance producer; specifies certain prohibited unfair trade practices; and sets forth miscellaneous marketing and related requirements.

N.J.A.C. 11:17B sets forth the rules concerning commissions and fees that may be paid to or charged by insurance producers.

N.J.A.C. 11:17C sets forth standards for licensed insurance producers concerning the management of funds and general recordkeeping for insurance related transactions.

N.J.A.C. 11:17D contains procedures for imposing administrative penalties, and includes a schedule of fines for violations of certain provisions of Titles 17 and 17B of the New Jersey Statutes Annotated and any rules or orders issued by the Commissioner.

The Department is proposing various amendments to the chapters being proposed for readoption. The heading for N.J.A.C. 11:17A and the heading for N.J.A.C. 11:17A-1 are being amended to remove references to limited insurance representatives. In N.J.A.C. 11:17A-1.2, the definition of "Commission" is being corrected to be the definition of "Commissioner." The definition of "inducement" is being amended to eliminate the term "intrinsic value" and replace it with "cost of" for clarification, and increase the minimum cost or redeemable value referenced in the definition from \$20.00 to \$25.00. The definition of "insurer" is being corrected to reflect both changes in the citations of the definitions and to accurately reflect all groups subject to the rules, including the added "organizations and/or groups formed under N.J.A.C. 11:2-36."

N.J.A.C.11:17A-2.4(b) has been amended to refer to the Commissioner as the correct

party to determine the value of consideration.

N.J.A.C. 11:17A-4.5 is amended to clarify that insurance producers shall not solicit the disclosure of personal or privileged information.

N.J.A.C. 11:17C-1.1 is amended to reflect citation changes brought about by changes made in the New Jersey Insurance Producer Licensing Act of 2001, and to clarify that the chapter applies to limited line credit insurance producers, surplus lines insurance producers and limited lines insurance producers.

N.J.A.C. 11:17C-2.3(a)1 is also amended to reflect a change in another rule to which it refers.

The schedule of fines found at N.J.A.C. 11:17D-2.4 is amended to add references to some of the rules generating such fines. N.J.A.C. 11:17D-2.4(a) is amended to reference N.J.A.C. 11:17-2.8(c) and N.J.A.C. 11:17D-2.4(a)6 is amended to reference N.J.A.C. 11:17-2.9. In addition, N.J.A.C. 11:17D-2.4(a)1 is amended to reflect the increase in the time period, from 20 to 30 days, within which a producer must notify the Department of any change of business or home address. N.J.A.C. 11:17D-2.4(a)4 is being amended to reflect N.J.A.C. 11:17-2.7(c), which requires an insurance producer to obtain approval by the Department for a business name prior to conducting business under that name. N.J.A.C. 11:17D-2.4(a)5 is amended to add a reference to the rule that requires the notification referenced herein and to add a 30-day time limit for compliance.

This rule proposal provides for a comment period of 60 days, and therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The rules proposed for readoption with amendments will affect all persons selling, soliciting or negotiating insurance in New Jersey, as well as the general public. Readoption of these rules is necessary to maintain the quality and professionalism of insurance producers by continuing the high standards of conduct required of licensees that protect the consumers and ensure quality insurance services.

Economic Impact Statement

The Department believes that the initial economic impact of the licensure requirements set forth in the New Jersey Insurance Producer Act of 2001, N.J.S.A. 17:22A-26 et seq., and N.J.A.C. 11:17A, 11:17B, 11:17C and 11:17D have already been fully absorbed by producer organizations and insurers.

By amending N.J.A.C. 11:17A-2.2 to state that inducements do not include items of values less than \$25.00, the Department continues to conserve its investigatory resources while allowing producers to participate in normal advertising practices which involve distribution of items of limited value.

N.J.A.C. 11:17B, concerning services fees and commissions, maintains the maximum permitted services fee of \$20.00. This same \$20.00 limit is also maintained for service fees for a new automobile insurance applications. The maximum inspection fee on a surplus line policy remains \$10.00.

The recordkeeping requirements contained in N.J.A.C. 11:17C continue to be beneficial to both the public and producers in that all producers continue to maintain both the books and records on their accounts. Any costs attendant to these recordkeeping requirements have already

been absorbed by the regulated community. An important benefit of the recordkeeping requirements to the Department continues to be a reduction in investigatory and other related costs since elements of insurance fraud and breach of producer's fiduciary duty remain easier to detect.

N.J.A.C. 11:17D, which lists fines for certain violations, has allowed producers to know in advance what their exposure is for particular violations. The addition of the statutory citations for various violations further aids the producers in their understanding of the particular violations. The Department has continued to save time and money relative to the handling of administrative matters attendant to the assessment and imposition of penalties.

Similarly, the proposed amendments will not have a discernable economic impact on the affected parties as the proposed amendments merely clarify existing regulations.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption and amendments are not subject to any Federal standards or requirements.

Jobs Impact

The Department does not anticipate that the rules proposed for readoption and amendments will result in the generation or loss of jobs. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendment and new rule together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact as a result of the proposed re adoption and amendments.

Regulatory Flexibility Analysis

Most persons selling, soliciting or negotiating insurance in New Jersey are “small businesses” as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These persons and entities will continue to be subject to all requirements, and must bear the costs of compliance imposed by these amended and readopted rules as discussed above.

The proposed amendments and rules proposed for re adoption provide no different reporting, recordkeeping or other compliance requirements specifically based on business size. The amendments and rules proposed for re adoption establish a regulatory framework for regulating the conduct for insurance producers to ensure that they comply with the minimum standards required to sell, solicit or negotiate insurance in New Jersey in a manner that will protect insureds and the insurance market generally. These purposes do not provide for different compliance requirements based on business size. For the foregoing reasons, the rules proposed for re adoption with amendments provide no differentiation in compliance requirements based on business size. The rules proposed for re adoption with amendments do not alter the reporting and recordkeeping requirements or the attendant cost factors that these rules impose on insurance producers and, to a limited extent, insurers. The rules still require all producers to maintain books and records on their accounts. Any cost attendant to recordkeeping and maintenance requirements have already been absorbed by the community. For an analysis of the costs of compliance, see the Economic Impact Statement above. The Department believes that these

tasks may continue to be accomplished with existing staff and that no professional services are required.

Smart Growth Impact

The rules proposed for readoption and amendments have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:17A, 11:17B, 11:17C, and 11:17D.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 17A. INSURANCE PRODUCER [AND LIMITED INSURANCE REPRESENTATIVE] STANDARDS OF CONDUCT; MARKETING

SUBCHAPTER 1. ACTIVITIES FOR WHICH A PERSON MUST BE LICENSED AS AN INSURANCE PRODUCER [OR REGISTERED AS A LIMITED INSURANCE REPRESENTATIVE]

11:17A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

. . . .

["Commission"] "**Commissioner**" means the Commissioner of the Department of Banking and Insurance of the State of New Jersey.

. . .

"Inducement" means money or any favor, advantage, object, valuable consideration or anything other than money which has [an intrinsic value] **a cost of** or a redeemable value greater

than [\$20.00] **\$25.00**.

. . .

"Insurer" means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined at N.J.S.A. [17:44A-1] **17:44B-1** et seq., risk retention groups and purchasing groups as defined at 15 U.S.C. § 3901 **and N.J.S.A. 17:47A-1 et seq.** [and], limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-2.2 **and organizations and/or groups formed under N.J.A.C. 11:2-36.**

11:17A-2.4 Rebates and inducements; determination of value

(a) (No change)

(b) The value of any favor, advantage, valuable consideration or any other item or service shall be determined by the [Commission] **Commissioner** or his or her designee.

11:17A-4.5 Disclosure of personal or privileged information

No insurance producer shall disclose **or solicit the disclosure of** personal or privileged information about an individual collected or received in connection with an insurance transaction except in conformity with N.J.S.A. 17:23A-1 et seq.

CHAPTER 17C

INSURANCE PRODUCER STANDARDS OF CONDUCT: MANAGEMENT OF FUNDS

11:17C-1.1 Purpose and scope

This chapter sets forth standards of conduct for licensed insurance producers, **including, but not limited to, limited line credit insurance producers, surplus lines insurance**

producers, and limited lines insurance producers, concerning the management of funds and general record-keeping for all insurance related transactions, for which a New Jersey insurance producer license **of any kind** is required, in implementation of N.J.S.A. [17:22A-17a(5), (15) and (17) and 17c] **17:22A-40.**

11:17C-2.3 Trust account

(a) An insurance producer shall establish and maintain a trust account into which shall be deposited cash, checks and other instruments payable to the insurance producer under the following circumstances:

1. When an insurance producer holds any premiums for more than five business days before remitting the premiums to an insurer or other insurance producer, pursuant to N.J.A.C. 11:17C-2.2(a)1[-5] **through 3;** or

2. (No change.)

(b) - (i) (No change.)

CHAPTER 17D

INSURANCE PRODUCER STANDARDS OF CONDUCT: ADMINISTRATIVE

PROCEDURES AND PENALTIES

11:17D-2.4 Schedules of fines for certain insurance producer licensing violations

(a) The Department shall impose fines for certain insurance producer violations in accordance with the following schedule:

1. Failure to maintain on file with the Department a complete and accurate business or home address or to notify the Department of a change of business or home

address within [20] **30** calendar days as required by N.J.A.C. 11:17-2.7(f): \$250.00, except where notification is delayed beyond 60 calendar days, including the aforesaid [20] **30** days, in which case the violator is subject to the maximum penalty provided by law;

2. Failure to notify the Department of the opening of a branch office within 30 days or the closing of a branch office within 20 days as required by N.J.A.C. 11:17-2.8(c): \$500.00;

3. (No change.);

4. Failure to [notify] obtain approval for the use of a business name from the Department [of a change of business name within 30 days] prior to conducting business under that name as required by N.J.A.C. 11:17-2.7(c): \$250.00;

5. Failure to notify the Department within 30 days of the addition or deletion of owners of more than five percent or officers, directors or partners as required by N.J.A.C. 11:17-2.11(c): \$250.00;

6. Failure to maintain in at least one office with an address on file with the Department copies of all employment contracts and copies of all agency contracts in accordance with N.J.A.C 11:17-2.9: \$100.00 per contract; and

7. (No change)

(b) (No change)